

Chapter 10 — Local Protection Measures

The DPC fully supports the protection of private property rights and the DPC will work to ensure that there will be no negative impacts stemming from NHA activities on private property, should the designation occur. The protection of agricultural integrity and viability in the Delta has been a key priority of the DPC since its formation and will continue to be so regardless of a Delta NHA designation.

Throughout the feasibility study process, stakeholders expressed concerns on a Delta NHA's impacts to private property rights and agricultural practices. Specific concerns have included:

1. Increased land use authority and/or land acquisition authority.
2. Increased restrictions on agricultural practices (e.g., spraying) that could result from an increase in visitors to the region.
3. Increased visitors to the Delta that could cause problems such as vandalism, theft, trespassing, etc., to agricultural areas.
4. Lack of oversight and management in recreational areas that could have negative implications (e.g., solid waste) on farmland.

This section outlines each of these concerns, along with approaches to address them.

Concern #1 - Increased Land Use Authority/Land Acquisition Authority

Concerns have been expressed by local stakeholders that land use authority and/or land acquisition authority will be granted to the management entity with NHA designation. However, research conducted indicates that these authorities are not granted with NHA designation, and enabling legislation and opt-out provisions can further protect private property owners.

Interviews

DPC staff conducted interviews with directors from several existing NHAs regarding private property rights implications. Representatives stated similar concerns have been expressed during their feasibility study processes, however these concerns were alleviated with time as citizens realized that NHAs do not threaten property rights. Summary points of these interviews include:

- No federal strings are attached with NHA designation.
- No power is given to management entities which supersede local decisions.
- Property owners can opt-out from being involved in the NHA.

Detailed outlines of these interviews can be found in Appendix 3.

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GAO Report

A study by the General Accounting Office (GAO), now called the Government Accountability Office, was released in 2004 which amongst other things examined any effects that NHAs have on private property rights.¹ This study was conducted as property rights advocates had raised a number of concerns about the potential effects of NHAs on private property rights and land use. Twenty-four NHAs were in existence at the time and the study concluded:

“...officials at the 24 heritage areas, Park Service headquarters and regional staff working with these areas, and representatives of six national property rights groups that we contacted were unable to provide us with a single example of a heritage area directly affecting-positively or negatively-private property values or use.”

Enabling Legislation

The 2011 legislation for a Delta NHA, introduced by Senator Feinstein and Congressman Garamendi (Appendices 1 and 2 respectively), included private property and regulatory protections as follows:

SEC. 3. SACRAMENTO-SAN JOAQUIN DELTA HERITAGE AREA.

(h) Private Property and Regulatory Protections-

(1) IN GENERAL- Subject to paragraph (2), nothing in this Act--

(A) abridges the rights of any property owner (whether public or private), including the right to refrain from participating in any plan, project, program, or activity conducted within the Heritage Area;

(B) requires any property owner to permit public access (including access by Federal, State, or local agencies) to the property of the property owner, or to modify public access or use of property of the property owner under any other Federal, State, or local law;

(C) alters any duly adopted land use regulation, approved land use plan, or other regulatory authority of any Federal, State or local agency, or conveys any land use or other regulatory authority to the management entity;

(D) authorizes or implies the reservation or appropriation of water or water rights;

(E) diminishes the authority of the State to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area; or

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(F) creates any liability, or affects any liability under any other law, of any private property owner with respect to any person injured on the private property.

(2) OPT OUT- An owner of private property within the Heritage Area may opt out of participating in any plan, project, program, or activity carried out within the Heritage Area under this Act, if the property owner provides written notice to the management entity.

The feasibility study for a Santa Cruz Valley NHA in Arizona includes specific language regarding private property and regulatory protections. This is quite similar to the language developed in the Feinstein and Garamendi legislation, with additional measures, as follows:

(b) Private Property Owner Protection-

(1) No privately owned property shall be preserved, conserved, or promoted by the management plan for the National Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(2) Any owner of private property included within the boundary of the National Heritage Area shall have their property immediately removed from within the boundary by submitting a written request to the management entity.

Opt-out provisions

In addition to language in the proposed enabling legislation, existing federal legislation allows property owners to opt out from participation in the NHA. Sec. 127 of Public Law 111-88-Oct. 30, 2009 states:

Any owner of private property within an existing or new National Heritage Area may opt out of participating in any plan, project, program, or activity conducted within the National Heritage Area if the property owner provides written notice to the local coordinating entity.

In summary, no land use authority or land acquisition authority is granted with NHA designation. Enabling legislation can provide further protection if concerns remain, and existing opt-out provisions allow private property owners to opt-out from NHA plans, projects, programs or activities.

Concern #2 - Restrictions on agricultural practices

Some concerns voiced from local stakeholders include that increases in recreational uses of the Delta, which may stem from NHA designation, will trigger nuisance complaints that will lead to restrictions on specific farming practices. Certain agricultural operations may result in noises, odors, dust, chemicals, smoke, and hours of operation, that may be in conflict with recreational activities. While these concerns are certainly valid, existing measures are in place to help protect agricultural practices from being negatively impacted by recreational activities, including Right-to-Farm Ordinances, and the DPC's Land Use and Resource Management Plan for the Primary Zone of the Delta. A Delta NHA will not impact these as NHA designation has no regulatory authority and cannot supersede existing local and state regulations.

Right-to-Farm ordinances

Each of the five Delta counties have Right-to-Farm ordinances, which were developed to protect landowners from any restrictions stemming from nuisance complaints in areas where non-agricultural land uses exist adjacent to or nearby agricultural lands. Right-to-Farm ordinances would not be impacted by NHA designation. Each of the five Delta counties' Right-to-Farm ordinances can be found in Appendix 6.

Land Use and Resource Management Plan for the Primary Zone of the Delta

The DPC supports the protection of agricultural practices. The Land Use and Resource Management Plan for the Primary Zone of the Delta (Plan) was adopted by the DPC in 1995 and updated in 2010. It is required that all local general plans within the Primary Zone are consistent with the Plan. Goals and policies of the Plan support agriculture and seek to minimize conflicts between agriculture and recreation. Relevant policies are as follows:

Land Use

Policy 2 - Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to promote and facilitate agriculture and agriculturally-supporting commercial and industrial uses as the primary land uses in the Primary Zone; recreation and natural resources land uses shall be supported in appropriate locations and where conflicts with agricultural land uses or other beneficial uses can be minimized.

Policy 3 - New non-agriculturally oriented residential, recreational, commercial, habitat, restoration, or industrial development shall ensure that appropriate buffer areas are provided

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by those proposing new development to prevent conflicts between any proposed use and existing adjacent agricultural parcels. Buffers shall adequately protect integrity of land for existing and future agricultural uses and shall not include uses that conflict with agricultural operations on adjacent agricultural lands. Appropriate buffer setbacks shall be determined in consultation with local Agricultural Commissioners, and shall be based on applicable general plan policies and criteria included in Right-to-Farm Ordinances adopted by local jurisdictions.

Natural Resources

Policy 1 - Preserve and protect the natural resources of the Delta. Promote protection of remnants of riparian and aquatic habitat. Encourage compatibility between agricultural practices, recreational uses and wildlife habitat.

Recreation & Access: Including Marine Patrol, Boater Education, and Safety Programs

Policy 4 - Encourage new regional recreational opportunities, such as Delta-wide trails, which take into consideration environmental, agricultural, infrastructure, and law enforcement needs, and private property boundaries. Also, encourage opportunities for water, hiking, and biking trails.

Policy 11 - Recognizing existing laws, encourage establishment of Delta-wide law enforcement protocols on local public nuisance and safety issues, such as trespassing, littering, and theft.

The full Plan can be viewed online at: www.delta.ca.gov

Concern #3 - Increased visitors to the region will result in conflicts such as vandalism, theft, trespassing, etc. to agricultural areas.

Objectives of NHA designation include the promotion of tourism and recreational activities, which has triggered concerns amongst private landowners regarding potential conflicts from unwanted visitors on farmlands. Concerns include that persons will engage in activities on private farmlands including trespassing, theft, vandalism, etc. While these concerns are certainly valid, it is also important to remember that many of the proposed projects and resources surrounding NHA designation are focused on the enhancement of existing public lands and historic areas of the Delta, rather than the development of new facilities, and therefore traffic circulation in the Delta for recreation and tourism would presumably follow current patterns.

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As discussed earlier, private property does not need to be included in the NHA and opt-out provisions would be included in the enabling legislation. If a property owner opts-out it would mean that their particular property would not be included in any NHA maps or promotional material, therefore reducing the visibility of their property to visitors and any associated negative impacts.

It is also important to mention that the development of regional trail systems is not included as an objective of NHA designation. However, there are other planning efforts underway for the implementation of regional trails in the Delta. SB 1556 mandated the DPC to complete the feasibility, planning and implementation process for a Great California Delta Trail, which would be a recreation corridor throughout all five Delta counties, connecting to the San Francisco Bay Trail and planned Sacramento River Trails. Currently a blueprint report has been completed for Delta Trail planning in Contra Costa and Solano Counties and a blueprint report for Sacramento, San Joaquin, and Yolo Counties is being initiated. Master Planning will be the next step in the trail planning process, which will identify potential specific links of the Delta Trail. Throughout Delta Trail planning, DPC staff will work closely with local governments, as well as representatives from diverse groups in each county including habitat, agriculture, business, and recreation organizations, to ensure that Delta Trail planning is closely aligned with the varied interests, capabilities and infrastructure of each county. Existing public lands will be identified as key places for Delta Trail implementation. Tools such as fee purchases, easements, licenses, and MOUs can be explored to acquire property access in relevant areas, with the consent and involvement of willing landowners. Water trails will also be a key component of the Delta Trail system and can be a viable option to ensure trail continuity in places where land trails are not feasible; however sensitive habitat and wildlife areas will not be adversely affected by the trail. Buffer zones will be implemented between the trail and places with sensitive wildlife habitat and private uses. Further concerns about the Delta Trail should be brought to the DPC during the Delta Trail planning processes.

Concern #4 - Lack of oversight and management in recreational areas that would have negative implications (e.g., solid waste) on farmland.

An increase in visitors to the Delta could result in an increase in persons who litter, which could travel by water or wind to Delta farmland. While a goal of the Delta NHA is to highlight partner sites for visitor usage, a goal is also to increase visitor amenities (such as waste receptacles, public restrooms, etc.) to accommodate an increase in visitors. Seed money and leveraged funds from NHA designation would likely be funneled to certain partner sites to develop these amenities. Additionally, an increase

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in visitors would also presumably help the partner sites become more economically sustainable, and therefore lead to an increase in staffing to monitor visitor activities.

While it is impossible to predict the specific implications that an increase in visitors to the region will have, it is also important to remember that the DPC is comprised of a predominantly local membership, and the NHA technical and stakeholder advisory committees will be composed of local representation, from groups including agriculture, habitat, and recreation. If negative implications do result from NHA activities, the management entity will work to resolve conflicts.

The following are policies from the Plan which address issues of concern regarding littering and lack of enforcement in recreational areas.


Recreation & Access: Including Marine Patrol, Boater Education, and Safety Programs

Policy 1 - Ensure appropriate planning, development and funding for expansion, ongoing maintenance and supervision of existing public recreation and access areas.

Policy 11 - Recognizing existing laws, encourage establishment of Delta-wide law enforcement protocols on local public nuisance and safety issues, such as trespassing, littering, and theft.

Again, the full Plan can be viewed online at: www.delta.ca.gov

¹United States General Accounting Office. “National Park Service, A More Systematic Process for Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed.” 2004.



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